

Case No. Z6000(V)

REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application.

I. Rejection Under 35 USC §103

The Examiner has rejected claims 1-6 and 8-13 under 35 USC §103 as being unpatentable over Brown, U.S. Patent No. 6,578,763 (hereinafter '763) in view of Littlejohn, U.S. Patent No. 6,553,353 (hereinafter '353). In the rejection, the Examiner mentions, in summary, that the '763 reference discloses the information described in claims 1-6 and 8-13. The Examiner further mentions that the '763 reference discloses Applicant's formula for prepaying. The Examiner still further mentions that the '763 reference describes that the original purchase price for the refillable container is discounted when refilled since no further pricing is required for the container. The Examiner believes this is true because the '763 reference mentions that the consumer will be given a discount coupon at the time of refilling. Furthermore, the Examiner believes that the '353 reference discloses prepaying. In view of the above, the Examiner believes that the 35 USC §103 rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 1, is directed to a method of purchasing a consumer product comprising the steps of (a) selling a consumer product in a package to a consumer at a point of purchase establishment, and (b) instructing the consumer to retain the package after the consumer product has been consumed and

Case No. Z6000(V)

(c) providing a means for the consumer to have the package refilled with consumer product wherein the product is sold at a sale price that includes a predetermined number of refills. The invention of claim 1 is further defined by the dependent claims which claim, among other things, the type of consumer product that can be purchased, the type of establishment that can sell the consumer product, packaging types, the characteristics of the packaging, the characteristics of the consumer product, and a specific mathematical formula that satisfies the method of purchasing such that a consumer saves money while simultaneously protecting the environment. In contrast, the '763 reference merely discloses a refillable bottle that is refilled in a machine with readable indicia on a container whereby the machine dispenses a discount coupon so that the consumer can use the coupon to pay the vendor at each and every refilling. The present invention, as now defined in the independent claim as previously amended, is directed to a method whereby the consumer only has to pay the vendor a single time and the single sale price includes a predetermined number of refills. Thus, the present invention is significantly more efficient and consumer friendly than the process described in the '763 reference which merely shows a method for vending a specific liquid consumer product whereby the consumer has to pay a vendor at every refill. Furthermore, there is nothing in the '763 reference that suggests a product being sold can be in form other than a liquid.

In an attempt to cure the vast efficiencies of the '763 reference, the Examiner relies on Littlejohn which discloses a non-analogous system directed to the regulating and billing of utilities by a customer. Clearly, the combination of references relied on by the Examiner does not teach the method set forth in claim 1 as presented. Particularly, claim 1 in combination with claim 11 specifically claims a method where one payment is made, a predetermined amount of refills can be made, and a customer pays less money by using a refillable package wherein the customer only has to deal with paying the vendor a single time. In view of this, it is clear that the Examiner has not

Case No. Z6000(V)

established a *prima facie* case of obviousness as required under 35 USC §103. Thus, the obvious rejection should be withdrawn and rendered moot.

II. Rejection Under 35 USC §103

The Examiner has rejected claim 7 under 35 USC §103 as being unpatentable over Brown (the '763 reference) in view of Littlejohn (the '353 reference) and further in view of Duvall, U.S. Patent No. 5,522,428 (hereinafter '428). In the rejection, the Examiner mentions, in summary, that the '428 reference describes the limitations of claim 7 in that the predetermined number of times to refill will be less than the number of times that causes stress fractures in the package. In view of the above, the Examiner believes that the 35 USC §103 rejection to claim 7 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a method for purchasing a consumer product wherein the product is sold at a sale price that includes a predetermined number of refills. Independent claim 1 is further defined by claim 7 wherein the consumer product which is sold in a package is sold in a manner such that the package is suitable to be refilled a predetermined number of times and the predetermined number of times is less than the number of times that would cause stress fractures in the package. As already made of record, the '763 reference teaches a method for refilling a container wherein the consumer must take a coupon dispensed from a refill machine and pay a vendor at each refill. The '353 reference is merely directed to an advanced metering system that enables regulation and billing of utilities by a third party interrogate. The '428 reference is merely directed to a natural gas

Case No. Z6000(V)

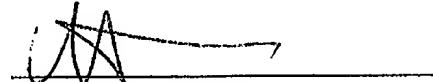
vehicle tank life sensor and control. The combination of references relied on by the Examiner does not, even remotely, teach, suggest, or disclose the invention set forth in the presently claimed invention. This invention is one where a consumer can make a single payment and have a container refilled a predetermined number of times, ensuring that the container will not break or stress fracture during the using and refilling period.

In view of the above, Applicants respectfully request that the rejection made under 35 USC §103 be withdrawn and rendered moot.

Applicants hereby submit that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

Applicants submit that claims 1-13 are ready for appeal.

Respectfully submitted,



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